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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 951

THE CALIFORNIA COMPANY, ET AL., *Petitioners*

v.

THE LEITER MINERALS, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioners, The California Company, Allen L. Lobrano, Ethel M. Fontenelle Lobrano, Robert Leo Lobrano and Karen Katherine Lobrano, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on March 3, 1964.

OPINIONS BELOW

The opinion of the District Court (App., Govt. Pet., p. 64, R. 634-648) is reported at 204 F. Supp. 560. The opinion of the Court of Appeals (App., Govt. Pet., p. 78, is reported at 329 F.2d 85.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on March 3, 1964 (App., Govt. Pet., p. 97). A timely petition for rehearing was denied October 5, 1964 (App., Govt. Pet., p. 98). On December 16, 1964, Mr. Justice Clark extended the time for filing a petition for a writ of certiorari to and including March 4, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The questions presented and the statutes and constitutional provisions involved are set out in the companion petition for a writ of certiorari filed by the United States in this case.

STATEMENT OF THE CASE

The individual petitioners Lobrano are the lessees, and petitioner The California Company is the operator, under the oil and gas leases issued by the United States on the lands involved in this case. Since the

[1] The opinions below, and the opinion of the Louisiana Supreme Court in the abstention proceedings in this case, are printed in the Appendix to the Government's petition for a writ of certiorari in this matter which is being filed simultaneously. References herein to the Appendix are to the Appendix to the Government's petition.

title of the United States to the mineral rights is in issue, the interests of these petitioners and of the United States are identical, and petitioners have been aligned as parties with the United States in the proceedings below. The United States is filing a separate petition for a writ of certiorari herein. Petitioners adopt, as their statement of the case, the statement in the petition of the United States.

REASONS FOR GRANTING THE WRIT

I.

THE QUESTIONS INVOLVED ARE IMPORTANT

Petitioners adopt the statement of the United States in its companion petition regarding the importance of the questions involved. We add one point:

No equities exist to support the windfall to respondents of an oil field worth hundreds of millions of dollars. At the time the land was acquired by the United States twenty-seven years ago, the value of the mineral rights was expressly taken into consideration in fixing the purchase price. In May, 1938, Leiter represented to the probate court in Louisiana "that said mineral rights had no known or ascertained value as of the date of the death of decedent" and that a fair value for the land, *including mineral rights,* for inheritance tax purposes, was the sum of $25,000, which the United States had agreed to pay for the land subject to the mineral reservation (R. 115). In October, 1943, Leiter sold his mineral rights to Humble Oil & Refining Company for $4,000—less than 50 cents an acre (R. 279-287). Simultaneously, he executed a "side agreement" recognizing that title to the minerals would vest in the United States on April 1, 1945, in accordance with the provisions of the deed (Supp.

R. 1). The "side agreement" provided that if Humble should obtain an oil and gas lease from the United States it would pay Leiter an overriding royalty of 1/48 of the oil and gas produced. Humble did not explore the property or apply for a lease and later relinquished its rights to Leiter (R. 288). Until petitioner The California Company explored for and discovered oil, the lands were purely "wildcat." It was only after an oil field had been discovered and developed at a cost of many millions of dollars that respondent corporation was formed by respondent's counsel (R. 317), acquired a quitclaim deed from Leiter (R. 298) and asserted a claim of title.

II.

THE DECISION ON THE CONSTITUTIONAL ISSUES CONFLICTS WITH PRIOR DECISIONS OF THIS COURT AND OF OTHER COURTS OF APPEALS

A. The Supremacy Clause

Petitioners adopt the statement of the United States in its companion petition in support of their submission that Louisiana Act 315 of 1940, as applied by the court below, is invalid under the supremacy clause of the Constitution. We add the following considerations:

Under Louisiana law, a reservation or grant of a mineral right in land does not create a separate estate, as is the rule elsewhere, but a "servitude," that is to say, a right to go upon the land and explore for and produce oil, gas or other minerals (Opinion of Louisiana Supreme Court, App., Govt. Pet., p. 35). This servitude is extinguished by "prescription" if it is not used within ten years.[2] Use of the servitude within

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[2] Louisiana Civil Code, Articles 783(2), 789, 3546; *Gayoso Co. v. Arkanas Natural Gas Corp.* (1933) 176 La. 333, 145 So. 677, 678.

ten years (*e.g.*, by drilling for oil, even if oil is not discovered) will renew the prescriptive period for another ten years from the time of user (App., Govt. Pet., p. 43).

These peculiarities of Louisiana law raised problems years ago when the United States began acquiring land in Louisiana for forest reserves under the Weeks Law,[3] the provisions of which are similar to the Migratory Bird Conservation Act. Generally speaking, the United States wished to acquire the surface rights to the largest possible acreage at the lowest cost. Its efforts to achieve this result were hampered in Louisiana because landowners feared that if they sold the surface, reserving minerals in perpetuity or for an extended period of years, the Louisiana prescription statutes might result in title to the minerals passing to the United States after ten years of nonuse.

Federal administrative rulings, issued at least as early as 1935, held that Federal and not state law applied to acquisitions of land under the Weeks Law by the United States and that the Louisiana ten-year prescription statute was not applicable to Federal acquisitions.[4] However, to allay the fears of Louisiana landowners Act 315 of 1940 was passed. At the time

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[3] Act of March 1, 1911, 36 Stat. 961, 16 U.S.C. 480.

[4] Opinion 13845, Asaistant Solicitor Boyle, United States Department of Agriculture, September 4, 1935:

> "The validity of the inclusion of any reservations appearing in the deed from a private grantor to the United States necessarily must be determined, not by the laws of the State of Louisiana, but by the laws of the United States • • •
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> • • • • •
>
> "• • • I am fully persuaded that Section 518, Title 16 U.S.C., if not expressly, by inescapable implication shows clearly that the United States, by sufficient legislative action

no doubt appears to have existed that this Act was simply "enabling" legislation to make clear that the United States could acquire land free of the local ten-year prescription law; in other words, that the Act was intended to refer only to involuntary statutory prescription.[3] The Louisiana Court of Appeals so con-

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with respect to the purchase of forest lands with reservations, has substituted its law for the laws of Louisiana; that Congress has positively exercised its power directly upon the subject matter involved and that such action entirely supersed the Louisiana law."

To the same effect, see the decision of the United States District Court for the Western District of Louisiana in *United States* v. *Nebo Oil Co.* (1950) 90 F. Supp. 73, 100-102.

[3] See, for example, Opinion No. 4943, March 25, 1944, Office of the Solicitor, Department of Agriculture. The opinion of Solicitor Shields had been requested on the question whether a mineral reservation of twenty-five years in a deed to the United States was subject to the ten-year prescription provisions of the Louisiana Civil Code. The question was answered as follows:

"Answering similar inquiry from the Forest Service in 1935, Acting Solicitor Boyle gave it as his opinion that the State law was not applicable, and that therefore the reservation would be good for the period specified in the deed. We think the same rule applies here."

Referring to Act 315 of 1940, the opinion continued:

"This statute is in harmony with the view of the law expressed in Acting Solicitor Boyle's opinion and is consistent with the government's carrying out the contract which the vendor entered into. * * * The 25-year reservation was a part of the consideration inducing him to convey the land. It is a property right and must be respected as such. * * *

* * * * *

"We think that the 10-year limitation, if it ever applied to this land after its conveyance to the United States, was repealed by the 1940 statute."

See also, as to the purpose of Act 315, the opinion of the District Court in *United States* v. *Nebo Oil Co.* (W.D. La. 1950) 90 F. Supp. 73.

strued the statute in the abstention proceedings in this case (126 So. 2d 76).

Had the Louisiana Supreme Court given the statute this normal and expected construction, the important constitutional questions now presented, which this Court sought if possible to avoid in its earlier order of abstention, would have been taken out of the case. Instead, the Louisiana Supreme Court held that the statute applied not only to involuntary statutory prescription but to stipulations with respect to the term of mineral reservations in private contracts of the United States—an extension of the statute to what the court termed "contractual prescription." This ruling, as applied by the court below, renders nugatory provisions in deeds to the United States reserving mineral rights for a fixed period and thereafter as long as oil and gas are produced in commercial quantities—the most common and practical form of mineral reservation.[6] The theory applied by the court was that such a contract provides for the loss of reserved mineral rights by nonuse ("prescription") and that the Louisiana statute, rendering "imprescriptible" reserved mineral rights in deeds to the United States, converts the mineral reservation to one in perpetuity.

The land in this case was acquired pursuant to the Migratory Bird Conservation Act, which was in furtherance of a national program for the protection of wildlife, implementing in part the treaty between the

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[6] All oil and gas leases of Federal lands, under both the Mineral Leasing Act of 1920 (30 U.S.C. 226) and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352), are for a fixed term and thereafter as long as oil or gas is produced in paying quantities.

United States and Great Britain.[1] The authority of the United States to enter into the contract of pur-

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[1] The title of the act was, "An Act to more effectively meet the obligations of the United States under the migratory bird treaty with Great Britain * * *" (Chap. 257, 45 Stat. 1222).

The Congressional debates emphasize the broad, national purposes effectuated by the Migratory Bird Conservation Act:

[Mr. Hope]: "I was telling of some of the work that the Biological Survey has already done in connection with the establishing of these refuges. * * * but never until the proposal of this measure have we had a definite, comprehensive program for the establishment of these sanctuaries" (70 Cong. Rec. (1929) 3181).

[Mr. Andreason]: "The bill, as amended, clearly defines and establishes a definite policy of the Government for the conservation and protection of migratory birds. Areas of land and land and water will be acquired for inviolate sanctuaries for migratory birds in every State and in Alaska" (70 Cong. Rec. (1929) 3177).

[Senator Swanson]: "It seems to me, as it is a matter of great national interest to preserve, protect, and take care of this game, that it ought to be treated in a national way" (69 Cong. Rec. (1928) 6606).

[Mr. Caraway]: "This is the point I want to make, that we cannot intrust to the various States the protection of migratory birds unless every one of the States shall adopt practically the same rules. * * * Migratory birds might be wiped out in Canada were it not for the treaty. They might be destroyed in any one of the border States were it not for some kind of protection extended by an act of Congress. They might be destroyed in the Southern States if there were not some uniform rule for their protection" (67 Cong. Rec. (1926) 9893).

Senator Norbeck pointed out that the question of the constitutionality of the measure had been set at rest by the decision of this Court in *Missouri* v. *Holland* (1920) 252 U.S. 416, where this Court said, "Here a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power" (67 Cong. Rec. (1926) 9615).

[Senator Bruce]: "If experience has demonstrated anything, it is that State authority is inadequate to the protection of

chase and to acquire rights under the deed "had its origin in the Constitution and laws of the United States" (*Clearfield Trust Co.* v. *U.S.* (1943) 318 U.S. 363, 366). Under the decision below, the United States, in effectuating its national program, is reduced to a choice between the high cost of an outright purchase of land or a purchase subject to the reservation of mineral rights in perpetuity.[8] No such restrictions are imposed by Louisiana upon any other purchaser, including itself and its political subdivisions.[9]

In so ruling the court not only applied state law to determine the meaning of the contracts entered into by the United States in carrying out the objectives of its nation-wide program, but applied that law to determine what legal results the United States is permitted and what results it is not permitted to achieve in effectuating its Federal purposes, regardless of its necessities. We know of no decision of this Court which even remotely sustains such a purported exercise of state power. On the contrary, the ruling clearly conflicts with controlling decisions of this Court and with decisions of other courts of appeals.

While, as we shall show, the effectuation of the purposes of the Migratory Bird Conservation Act requires

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migratory-bird life. Nor do I think that it can be successfully questioned that protection of migratory-bird life is not a matter of State concern merely, but of national concern as much as interstate commerce itself" (67 Cong. Rec. (1926) 9417).

[8] This is the practical effect of the decision, for, while the decision leaves the United States open to acquire land subject to a mineral reservation for a definite term of years *not* subject to continuation if oil and gas are discovered and produced, such reservation is an uncommon and commercially impractical form of mineral reservation.

[9] See opinion of Judge Wright in the District Court, App., Govt. Pet., p. 68.

the application of uniform Federal law in determining the construction and legal effect of the deed, of even greater importance is the point of fundamental principle that state law cannot ever be allowed, consistently with the supremacy clause and the nature of the Union, to prescribe for the United States what it may do and what it may not do in carrying out affirmative governmental programs and so to nullify essential features of them.

McCulloch v. *Maryland* (1819) 4 Wheat. 17 U.S. 316;

Mayo et al. v. *United States* (1943) 319 U.S. 441;

Com'n. v. *United States* (1958) 355 U.S. 534;

United States v. *Georgia Pub. Serv. Com'n.* (1963) 371 U.S. 285

The court's extraordinary ruling is articulated as follows (App., Govt. Pet., p. 85):

> "We have no doubt that the Congress could make federal law applicable, but we are equally clear that it had no intention to do so when it merely authorized the contract by which the United States acquired the property. State law must govern in the absence of a federal statute making federal law applicable. * * *"

The court's major premise—that state law governs in the absence of a Federal statute making Federal law applicable—is plainly wrong.[10] The principle is set-

[10] The court's patent error in this regard is noticed in a recent case note in The Harvard Law Review, where the decision below is questioned under both the contract and supremacy clauses (78 Harv. L. Rev. 891, February, 1965).

tled that "where essential interests of the Federal Government are concerned, federal law rules unless Congress chooses to make state laws applicable" (*United States* v. *93.970 Acres* (1959) 360 U.S. 328, 332-333), and that "In absence of an applicable Act of Congress it is for the federal courts to fashion the governing rule of law according to their own standards" (*Clearfield Trust Co.* v. *U.S.* (1943) 318 U.S. 363, 367).

> "Every acquisition, holding, or disposition of property by the Federal Government depends upon proper exercise of a constitutional grant of power. * * *
>
> "* * * The purpose of the supremacy clause was to avoid the introduction of disparities, confusions and conflicts which would follow if the Government's general authority were subject to local controls. The validity and construction of contracts through which the United States is exercising its constitutional functions, their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any state" (*U.S.* v. *Allegheny County* (1944) 322 U.S. 174, 182-183).

And see:

D'Oench, Duhme & Co. v. *F.D.I.C.* (1942) 315 U.S. 447;

United States v. *Standard Oil Co.* (1947) 332 U.S. 301;

Metropolitan Bank v. *U.S.* (1945) 323 U.S. 454-456;

Banco Nacional de Cuba v. *Sabbatino* (1964) 376 U.S. 398, 426.

Numerous decisions of the lower courts are in accord. Among them are the decisions of the Tenth Circuit in *Bumpus* v. *United States* (1963) 325 F. 2d 264, of the Seventh Circuit in *United States* v. *Certain Interests in Property, Etc.* (1959) 271 F. 2d 379, of the Ninth Circuit in *State Box Company* v. *United States* (1963) 321 F. 2d 640, and the later decision of the Fifth Circuit in *United States* v. *Pinson* (1964) 331 F. 2d 759, all of which conflict in principle with the decision of the court below.

Further, there is no basis for the conclusion of the court below that Congress "merely authorized the contract" by which the United States acquired its property. The Migratory Bird Conservation Act, in providing a comprehensive plan for the acquisition and control of wildlife refuges (App., Govt. Pet., p. 29 *et seq.*), affirmatively declares a policy which is subverted by the Louisiana statute as applied by the court below.

Section 715a of the Act creates the Migratory Bird Conservation Commission chaired by the Secretary of the Interior. The Secretary is directed to recommend areas for purchase or rental which he determines to be "necessary for the conservation of migratory game birds" (sec. 715c) and, subject to the Commission's approval, to purchase or rent "for use as inviolate sanctuaries for migratory birds, areas which he shall determine to be suitable for such purposes" (sec. 715d).

Section 715e provides:

> "* * * the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion

> of the Secretary of the Interior in no manner interfere with the use of the areas so encumbered for the purposes of said sections, * * *"

Section 715i provides that no person shall "occupy or use any part [of the acquired areas], or enter thereon for any purpose, except in accordance with regulations of the Secretary of the Interior."

The Congressional policy expressed by the foregoing and related provisions of the Migratory Bird Conservation Act is plain. The Secretary of the Interior is granted full discretion to bargain for property under the Act in the manner he deems best to further the Federal purposes and, in particular, to determine which rights-of-way, easements and reservations can be harmonized with the Federal use.[11]

B. The Contract Clause

C. The Fourteenth Amendment—Discrimination Against the United States

For the reasons stated in the Government's petition, Act 315 of 1940 as applied below clearly violates the contract clause and, in its discrimination against the United States, violates both the supremacy clause and the Fourteenth Amendment of the Constitution. On these points we adopt the submission in the Government's petition.

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[11] Once title to the minerals in a wildlife refuge has vested in the United States, no well can be drilled without the consent of the Secretary of the Interior upon the advice of the Fish and Wildlife Service (43 C.F.R. 192.9; 12 F.R. 7334; see R. 158). Present regulations bar all leasing of refuge lands except in the case of drainage (43 C.F.R. (April 1, 1964 ed.) 3120.3-3, 23 F.R. 227).

III.

THE DECISION CONSTRUING THE CONTRACT AND DEED IS CLEARLY ERRONEOUS

The decision of the court below that Act 315 of 1940 was applicable to the deed in this case is clearly erroneous. The Louisiana Supreme Court held that for Act 315 to apply to the contract and deed (1) the mineral reservation must have been for an uncertain and indefinite time, and (2) the parties must have provided by contract for the conditional extinguishment of the reserved rights by prescription. Neither requisite is present here.

(1) The reservation was for a fixed and definite term. It provided for an original term of ten years with conditions which, if complied with in the original term or any succeeding extension, would give rise to a limited number of successive extensions of five years each. Once initiated, any extended term would expire, just as any other fixed term for years would expire, by the passage of the specified time and regardless of use or nonuse.[12] The reservation could not exist in perpetuity, as could one limited on nonuse, since the number of terms was of necessity limited. Use of the servitude to commercial advantage inevitably would reduce the minerals so that some day the owner could no longer earn an additional term and the servitude would then expire on the day fixed by

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[12] As Judge Wright said (App., Govt. Pet., p. 74):

> "There is nothing difficult about the interpretation of this provision. It very clearly establishes a mineral servitude for a term of ten years, subject to partial renewal for additional five year terms in the event of actual production in paying quantities for specified periods. Obviously, the duration of the reservation is not governed by the usual laws of prescription."

its own terms.[13] In holding that this servitude was one for an indefinite term, the court below simply confused the lay concept of a term of uncertain duration with the technical concept of a servitude for a fixed term. A servitude which terminates upon the happening of an event certain in nature to occur, even if the time of its occurrence cannot be foretold, is a servitude for a fixed term.[14]

(2) Beyond this, the parties did not stipulate "for a period of contractual prescription for the conditional extinguishment of the mineral servitude." Neither the court below nor the Louisiana Supreme Court provides a definition of what is "contractual prescription." As Judge Wright said, it "is, at best, an odd notion" (R. 646; App. Govt. Pet., p. 75). But clearly, as Judge Wright held, if a private contract is to be held to provide for "prescription," its provisions should not disregard "all the modalities of the law of prescription" (R. 646; App., Govt. Pet., p. 76). Here the contract lacked every essential element of prescription under the general law of Louisiana.

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[13] Thus in *Sam George Fur Co.* v. *Arkansas-Louisiana Pipeline Co.* (1933) 177 La. 284, 148 So. 51, the Supreme Court of Louisiana said of an oil and gas lease which was to run for ten years from the discovery of minerals and as much longer as oil and gas should be produced in paying quantities (p. 52):

> "Such a lease is by no means a lease in perpetuity, as the main consideration of the lease is the development of the land, and it is a matter of common knowledge that oil and gas fields cease to produce in paying quantities after the lapse of a certain number of years."

[14] Art. 2049, Louisiana Civil Code:

> "A term may not only consist of a determinate lapse of time, but also of an event, provided that event be in the course of nature, certain; if it be uncertain, it forms a condition."

Under the Louisiana law of prescription any use of a mineral servitude, whether or not it results in commercial production, renews the entire servitude for the full prescriptive period of ten years. Here, in order to renew the servitude the contract required (a) commercial use over the course of three or five consecutive years, (b) the new term earned by such use was for five years only and (c) any extension was limited to a stated area around the point of actual production (25 acres around each well).

Further, the contract provided for termination of the servitude in a manner completely at variance with prescription. A servitude "prescribes" when it expires for nonuse—a presumed abandonment.[15] Here the contract provided that the servitude could expire if it was then in use, or even in successful use.[16] A servitude which expires while it is in use or successful use cannot be presumed to be abandoned and is not extinguished by prescription.

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[15] Art. 783, Louisiana Civil Code:

"Servitudes are extinguished:

• • •

2. By prescription resulting from non-usage of the servitude during the time required to produce its extinction."

[16] The contract and deed required commercial production over three or five-year periods. Use of the servitude by dryhole drilling in the course of active exploration, which would rebut any presumption of abandonment and extend the servitude under the law of prescription, would not prevent termination. And even successful use would not extend the term unless it had continued for the prescribed period. Thus, the servitude could terminate even though the grantor had discovered and was producing a large oil and gas field at the end of the original or any extended term.

CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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